



California Form 593-W and Instructions for Non-Individual Sellers Only

2003

Real Estate Withholding Exemption Certificate and Waiver Request for Non-Individual Sellers

*Use this form to apply for a real estate sales withholding exemption
or to request a waiver or reduction in the withholding.*

General Information

What's New

Assembly Bill 2065, expands withholding requirements to apply to resident individuals on California real property sales that close on or after January 1, 2003. The previous law applied to all nonresidents, including individuals. The new law also eliminates withholding waivers for all individuals after that date. We developed new forms to meet the new requirements. **Non-individual** sellers must use Form 593-W, *Real Estate Withholding Exemption Certificate and Waiver Request for Non-Individual Sellers*, to determine if they qualify for a withholding exemption or to request a waiver from withholding for the sale of California real estate. Form 593-W replaces Forms 597-E, 597-I, and those portions of 597-W that applied to non-individuals. Non-individuals are any type of entity other than individuals, such as corporations, estates, partnerships, trusts, etc. **Individual** sellers must use Form 593-C, *Real Estate Withholding Certificate for Individual Sellers*, to claim an exemption.

Purpose

When the following entities sell California real estate, the buyers must withhold 3 1/3 percent of the total sales price and submit it to the California Franchise Tax Board (California Revenue and Taxation Code Section 18662):

- Corporations that do not have a permanent place of business in California.
- Entities other than corporations that do not have a last known street address in California.

If you are a non-individual seller, your buyer need not withhold if you meet certain requirements. Also, you can request a waiver or a reduction of withholding if the 3 1/3 percent will result in significant over-withholding. To determine whether you qualify for a withholding exemption, or to request a waiver or reduction, you must complete the attached California Form 593-W as follows:

- Use Part I of Form 593-W to certify that you qualify for a withholding exemption for the sale of California real estate.
- Use Part II of Form 593-W to request a waiver or reduction of the required withholding for the sale of California real estate only when you believe your tax liability from the sale will be much less than 3 1/3 percent of the total sales price.

Who Must Withhold?

Although the law requires the buyer to withhold, the buyer can request the escrow person to do the withholding. We use the term *withholding agent* throughout these instructions to refer to either the escrow person or the buyer, whoever is taking responsibility for withholding.

What is Real Estate Withholding?

Real estate withholding is:

- A prepayment of estimated income tax due from the gain on a sale of California real estate. If the amount withheld is more than the income tax liability, we will refund the difference when you file a California tax return after the end of the year.
- Not an additional tax on the sale of real estate.

Why Do We Withhold?

We withhold:

- To ensure payment of income tax owed on the taxable gain from the sale.
- To reduce the likelihood of penalties charged to the seller for underpayment of estimated tax.

Withholding Agent Instructions

- Provide Form 593-W, with instructions, to non-individual sellers with a last known street address outside of California as soon as escrow opens. We update our forms and instructions annually, so please make certain you use the most current form.
- The sellers should complete and sign Form 593-W, then give it to you.
 - If the sellers check "YES" on any of the boxes on Form 593-W, Part I, you are relieved of the real estate withholding requirements if you rely in good faith on the completed and signed form, certifying an exemption from withholding. You should retain the form for five years following the close of the transaction.
 - If the sellers check "NO" on all of the boxes on Form 593-W, Part I, they are subject to the withholding requirements. Non-individual sellers can request a waiver or reduction in withholding by completing Form 593-W, Part II. The completed request must be submitted to us before the close of escrow so we can make a determination.

If the close of escrow or 45-day deadline is near and we have not responded to the waiver request, call us at (888) 792-4900 to check the status of the request before sending the payment.

If no waiver request was submitted or you receive a determination letter from us stating there is still a withholding requirement, you must complete Form 597, *Real Estate Withholding Tax Statement*, and mail it to us with the amount withheld. If the seller requested a waiver, enter the confirmation number from our determination letter on Form 597. You must file a separate Form 597 for each seller with an amount withheld.

Please see Form 597 for further instructions.

Contacting the Franchise Tax Board

To order California tax forms:

By Internet: You can download, view, and print California tax forms and publications. For real estate withholding forms, go to our Website at:

www.ftb.ca.gov

By automated phone service: Use this service to order California tax forms and current year federal forms. Have a paper and pencil ready to take notes.

From within the United States: (800) 338-0505

From outside the United States (not toll-free): (916) 845-6600

Follow the recorded instructions. This service is available 24 hours a day, seven days a week.

By mail: Please allow two weeks to receive your order. If you live outside California, please allow three weeks to receive your order. Write to:

TAX FORMS REQUEST UNIT
FRANCHISE TAX BOARD
PO BOX 307
RANCHO CORDOVA CA 95741-0307

In person: Many California libraries, post offices, and banks provide free California personal income tax booklets during the filing season. Most libraries and some quick print businesses have forms and schedules for you to photocopy (a nominal fee may apply). **Note:** Employees at libraries, post offices, banks, and quick print businesses cannot provide tax information or assistance.

CONTACT US WITH REAL ESTATE WITHHOLDING QUESTIONS AT:

(888) 792-4900 or (916) 845-4900 (not toll-free)

Telephone assistance is available from 8 a.m. until 5 p.m. Monday through Friday.

We may modify these hours without notice to meet operational needs.

ASSISTANCE

(For state income tax issues unrelated to your real estate withholding)

Telephone assistance is available from 7 a.m. until 8 p.m. Monday through Friday and from 8 a.m. until 5 p.m. on Saturdays. We may modify these hours without notice to meet operational needs.

From within the United States, call (800) 852-5711

From outside the United States, call (not toll-free) (916) 845-6500

Website at: **www.ftb.ca.gov**

Assistance for persons with disabilities: We comply with the Americans with Disabilities Act. Persons with hearing or speech impairments please call TTY/TDD (800) 822-6268.

Part I - Withholding Exemption Certificate

Use this section to determine if you meet any of the exemptions to withholding.

Caution: Sellers who are individuals may not use this form. If you are an individual, get Form 593-C.

If you are a non-individual seller, we allow you an exemption from withholding if you meet any of the conditions in Part I. You need to complete and sign Form 593-W, Part I, then give it to your withholding agent.

Note: If you qualify for an exemption from withholding, you may still have to file a California tax return and pay any tax due on the sale of the California real estate.

Line 1 – Total Sales Price of Property

The total sales price of the California property is \$100,000 or less. Multiple sellers of California property must use the total sales price of the property, not just their ownership percentage.

Line 2 – Corporation

A corporation has a permanent place of business in California if:

- It is organized and existing under the laws of California; or
- It is a non-California corporation qualified to transact intrastate business by the California Secretary of State; or
- It still maintains and staffs a permanent office in California immediately after the sale.

Line 3 – Partnership

We do not require withholding if the recorded title to the property being transferred is in the name of a partnership. However, partnerships must withhold on distributions of California source income to domestic nonresident partners. They must also withhold on foreign partners' allocable shares of California source income whether distributed or not. (Get FTB Pub. 1017, *Nonresident Withholding Partnership Guidelines*, for withholding information.)

Line 4 – Limited Liability Company (LLC)

We do not require withholding if the recorded title to the property being transferred is in the name of an LLC that:

- Is classified as a partnership for federal and California income tax purposes; and
- Is not a single member LLC that is disregarded for federal and California income tax purposes.

If the LLC meets these conditions, the LLC must still withhold on distributions of California source income to domestic nonresident members. They must also withhold on foreign members' allocable shares of California source income whether distributed or not. (Get FTB Pub. 1017, *Nonresident Withholding Partnership Guidelines*, for withholding information.)

Note: If the LLC is a single member LLC that is disregarded for federal and California income tax purposes, then the seller is that single member. If the member is an individual, rules for individuals apply (See Form 593-C); if the member is a corporation, rules for corporations apply (Refer to Line 2); etc.

If the LLC is classified as a corporation for federal and California income tax purposes, then the seller is considered a corporation for withholding purposes. Refer to Line 2.

Line 5 – Tax-Exempt Entity

We do not require withholding if the seller is tax-exempt under either California or federal law.

Line 6 – Irrevocable Trust

An irrevocable trust is one that is bound by the conditions set forth in the trust instrument and cannot be terminated by the creators (or trustors) once created. An irrevocable trust is exempt from withholding if at least one trustee is a California resident. (Please note that a successor trustee that is a California resident does not exempt the trust from withholding unless the successor trustee has moved to a position of current responsible trustee.) However, irrevocable trusts must withhold on distributions of California source taxable income to nonresident beneficiaries. (Get FTB Pub. 1023, *Nonresident Withholding Independent Contractor, Rent & Royalty Guidelines*, for withholding information.)

Line 7 – Estate

An estate is exempt from withholding if the decedent was a California resident at the time of death. (Please note that this only applies if the estate is selling the property. We require withholding if a nonresident beneficiary, who inherited the property, is selling it.) However, estates must withhold on distributions of California source taxable income to nonresident beneficiaries. (Get FTB Pub. 1023, *Nonresident Withholding Independent Contractor, Rent & Royalty Guidelines*, for withholding information.)

Line 8 – Bank or Bank Acting as a Fiduciary for a Trust

The seller is a bank or a bank acting as a fiduciary for a trust.

Line 9 – Insurance Company, Individual Retirement Account, or Qualified Pension or Profit-Sharing Plan

The seller is an insurance company, Individual Retirement Account, or qualified pension or profit-sharing plan.

2003

Real Estate Withholding Exemption Certificate and Waiver Request for Non-Individual Sellers

593-W

Part I Withholding Exemption Certificate

Seller's Information

Name	<input type="checkbox"/> CA corp. no. <input type="checkbox"/> FEIN <input type="checkbox"/> SOS file no. <input type="checkbox"/> Social security no.	
Address	Private Mailbox no.	Note: If you do not furnish your tax ID number this certificate is void.
City, State, ZIP Code	Daytime number ()	
Property address (if no street address, provide parcel number and county)		

Read the following and check the appropriate box. **See line-by-line instructions, Part I – Withholding Exemption Certificate.**

- | | YES | NO |
|---|--------------------------|--------------------------|
| 1. Is the total sales price of this property, before applying your percentage of ownership, \$100,000 or less? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Is the seller a corporation that is either qualified through the California Secretary of State or has a permanent place of business in California? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Is the seller a partnership with recorded title to the property in the name of the partnership?
(If yes, the partnership must still file a California tax return to report the sale and withhold on foreign and domestic nonresident partners as required. Get FTB Pub. 1017, <i>Nonresident Withholding Partnership Guidelines</i> , for withholding information.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Is the seller (recorded title holder) a limited liability company (LLC) that is classified as a partnership and is not a disregarded single member LLC for federal and California income tax purposes?
(If yes, the LLC must still file a California tax return to report the sale and withhold on foreign and domestic nonresident members as required. Get FTB Pub. 1017, <i>Nonresident Withholding Partnership Guidelines</i> , for withholding information.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Is the seller a tax-exempt entity under either California or federal law? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Is the seller an irrevocable trust with at least one trustee who is a California resident? (If yes, the trust must still file a California tax return to report the sale and withhold when distributing California source taxable income to nonresident beneficiaries as required. Get FTB Pub. 1023, <i>Nonresident Withholding Independent Contractor, Rent & Royalty Guidelines</i> , for withholding information.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Is the seller an estate where the decedent was a California resident at the time of death? (If yes, the estate must still file a California fiduciary tax return to report the sale and withhold when distributing California source taxable income to nonresident beneficiaries as required. Get FTB Pub. 1023, <i>Nonresident Withholding Independent Contractor, Rent & Royalty Guidelines</i> , for withholding information.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Is the seller a bank or a bank acting as a fiduciary for a trust? | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Is the seller an insurance company, Individual Retirement Account (IRA), or qualified pension/profit sharing plan? | <input type="checkbox"/> | <input type="checkbox"/> |

Under penalties of perjury, I hereby certify that the information provided above is, to the best of my knowledge, true and correct. If conditions change, I will promptly inform the withholding agent. I understand that completing this form does **not** exempt me from filing a California income or franchise tax return to report this sale.

Seller's name and title (type or print) _____

Seller's signature _____ Date: _____

If you answered "YES" to **any** of the above questions, STOP HERE. You are exempt from the real estate withholding requirements. Provide this form to your escrow company or the buyer (withholding agent).

If you answered "NO" to **all** of the above questions, you are subject to the real estate withholding requirements. The required withholding is 3 1/3 percent of the **total** sales price. Do you expect your tax liability from the sale of this property to be substantially less than that amount? If so, would you like to request a reduced amount of withholding?

- ☐ Yes. Complete the Withholding Waiver Request (Part II) and send it to the Franchise Tax Board.
- ☐ No. STOP HERE. Your escrow officer will withhold 3 1/3 percent of the total sales price and send it to us on your behalf. Obtain the seller's copy of Form 597, *Real Estate Withholding Tax Statement*, from the escrow officer to attach to your California income tax return when you file and claim the amount withheld.

Withholding Agent: If you have a requirement to withhold, complete Form 597, *Real Estate Withholding Tax Statement*, and send one copy to us with the withholding payment and give two copies to the seller. Refer to the Form 597 Instructions.

2003**593-W****Part II Withholding Waiver Request (please print or type)*****Seller's Information***

Name of seller (if more than one, see Part II – Withholding Waiver Request Instructions for multiple sellers)		Seller's Entity Type <input type="checkbox"/> Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Estate <input type="checkbox"/> Trust	<input type="checkbox"/> California corporation no. <input type="checkbox"/> FEIN
Mailing address	Private Mailbox no.		Seller's social security number (SSN)
City, state, and ZIP Code (province, country, and postal zone)			Seller's email address
Daytime number ()	Ownership percentage		
Provide a brief explanation of your reason for requesting a waiver or reduced withholding. See instructions for examples of situations for which a waiver or reduced withholding is allowed and for the required information and documentation.			

Property Information

Property address (if no street address, provide parcel number and county)	
Seller acquired property by (check one): <input type="checkbox"/> Purchase <input type="checkbox"/> Inheritance <input type="checkbox"/> Foreclosure/Repossession <input type="checkbox"/> Gift <input type="checkbox"/> 1031 Exchange call (888) 792-4900 U.S. toll-free or (916) 845-4900 <input type="checkbox"/> Other _____	Date seller acquired property _____ Seller's adjusted basis: Purchase price \$ _____ Add: improvements _____ Less: depreciation _____ Adjusted basis \$ _____
Use of property at time of sale: <input type="checkbox"/> Rental / Commercial <input type="checkbox"/> Vacant land <input type="checkbox"/> Secondary / Vacation home <input type="checkbox"/> Other (attach explanation)	Provide all required documentation listed in the instructions.
Length of time used for this purpose: Years _____ Months _____	

Escrow Information

Name and address of escrow company	Escrow company email address
	Name of escrow officer Escrow number
	Escrow company or officer telephone number () FAX number ()
Total sales price of property before applying your ownership interest	Estimated close of escrow date

Buyer's Information

Name of buyer (see Part II – Withholding Waiver Request Instructions if more than one)	Buyer's social security number (SSN)
Address (number and street, PO box or rural route)	Private Mailbox no.
	<input type="checkbox"/> California corporation no. <input type="checkbox"/> FEIN
City, state, and ZIP Code (province, country, and postal zone)	Buyer's spouse's SSN (if applicable)

Under penalties of perjury, I hereby certify that the information provided above is, to the best of my knowledge, true and correct. If conditions change, I will promptly inform the withholding agent and the Franchise Tax Board. I understand that completing this form does **not** exempt me from filing a California income or franchise tax return to report this sale.

Seller's name and title (type or print) _____

Seller's signature _____ Date: _____

Part II - Withholding Waiver Request Instructions

Use this section if you do not meet any of the exemptions to withholding as shown in Part I and you believe your estimated tax liability from the sale will be substantially less than the required withholding.

Caution: For sales closing on or after January 1, 2003, the law does not allow individuals to request reduced withholding from FTB. If you are an individual, you may not use this form. Get Form 593-C to see if you qualify for one of the exemptions for individuals.

We handle waiver requests for non-individuals on a case-by-case basis. Generally, we will reduce or eliminate the withholding amount when:

- The 3 1/3 percent withholding amount exceeds the estimated California tax liability from the sale. For example:

Statutory Amount Computation:

Selling price	\$250,000
Withholding rate	x 3.33%
Withholding amount	\$ 8,325

Reduced Amount Computation:

Gain on sale	\$50,000
Maximum tax rate	x 8.84% *
Estimated tax liability	\$ 4,420

In this example, we will reduce the withholding amount from \$8,325 to \$4,420. If the documentation provided shows that the estimated tax liability would be \$0 from the sale, we will grant a full waiver.

*The current maximum tax rates are 9.3 percent for estates and trusts and 8.84 percent for corporations.

- The transaction involves an Internal Revenue Code (IRC) Section 1031 exchange, a foreclosure, or an installment sale.
- The transaction involves multiple sellers, and only some are subject to withholding.

Note: The statutory withholding amount is 3 1/3 percent of the total sales price regardless of the percentage of interest owned in the property.

Supporting Documentation

To compute your estimated tax liability, you must provide the documents listed below. We may request additional information on a case-by-case basis. Do not send original documents.

Required With All Waiver Requests

- ✓ The current sale escrow document (estimated or final closing statement).
- ✓ A list of any improvements and related costs (except for IRC Section 1031 Exchanges).
- ✓ The depreciation schedule (if property has been used for rental or commercial purposes). Do not provide for IRC Section 1031 exchanges.

Required for Any of the Following Situations:

If You Acquired by Purchase

- ✓ The grant deed for the original purchase showing the transfer tax, or

- ✓ The purchase escrow document (closing statement) from the original purchase.

If You Acquired by IRC Section 1031 Exchange

- ✓ A completed federal Form 8824, Like-Kind Exchanges, or
- ✓ The sales escrow statements for the property given up and purchase escrow statement for property received.

If You Inherited Through an Estate (Probate)

- ✓ The court documents showing the fair market value of the property at the time of inheritance.

If You Inherited Through a Trust

- ✓ The trust documents showing inheritance.
- ✓ The death certificate.
- ✓ The appraisal as of inheritance date.

If You Acquired Through Right of Survivorship (Joint Tenancy)

- ✓ The death certificate.
- ✓ Also include any one of the following:
 - An appraisal of the property at the time of death.
 - The federal Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.
 - The probate court document.
 - The original purchase statement.
 - The original grant deed.

If You Are Selling Using IRC Section 1031 Exchange

Include the following information in the box provided for explaining your waiver request in Seller's Information:

- Indicate this will be an IRC Section 1031 exchange,
- Indicate whether the exchange will be simultaneous or non-simultaneous,
- Provide name, address, and phone number of the intermediary or accommodator, and
- Provide address or location of the replacement property (if identified).

If it is a simultaneous exchange, withholding will still be required in escrow for any proceeds you receive.

If it is a non-simultaneous exchange, the withholding agent must transfer the proceeds from the sale directly to an intermediary or accommodator. The intermediary or accommodator must withhold from any cash or cash equivalent (boot) received by the seller.

If the exchange does not take place, or if the exchange does not qualify for nonrecognition treatment under IRC Section 1031, the withholding agent must withhold 3 1/3 percent of the total sales price of the real property sold.

If You Will Carry a Note (Installment Sales)

- ✓ The note agreement.

Include the following statement in the box provided for explaining your waiver request in the Seller's Information:

"As a condition to obtaining a waiver to the withholding requirement, the seller/transferor agrees to do the following:

- 1. File a California income or franchise tax return for the year of the sale and any year in which principal payments are received on the note; and*
- 2. Make estimated income tax payments that reflect the income tax due on principal payments received."*

If You Reacquired the Property (Foreclosure or Repossession)

- ✓ The original sale escrow document from the first time you sold the property before foreclosure.
- ✓ The original purchase escrow document (closing statement) from when you originally purchased the property.
- ✓ The statement of the amount of cash (down payment) received on the original sale before foreclosure.
- ✓ The statement of the amount of notes received or carried before foreclosure. Provide copies of the notes carried.
- ✓ The statement of the balance due remaining on the note.
- ✓ A list of foreclosure costs (the costs to get the property back).
- ✓ The calculation of the gain from the original sale.
- ✓ A copy of federal Form 6252, *Installment Sale Income*, or California form FTB 3805E, *Installment Sale Income*, filed with your tax return in the year of the original sale.
- ✓ The Deed In-Lieu of Foreclosure or Trustee's Deed Upon Sale.
- ✓ A brief chronological outline of your property ownership, from when you first acquired the property to the present.

If There Are Multiple Sellers

Enter the information for the primary nonresident seller on this form and attach a separate sheet listing the following for each additional seller:

- ✓ Name.
- ✓ Address.
- ✓ Telephone number.
- ✓ Ownership percentage.
- ✓ Entity type.
- ✓ Tax ID number.

Also state whether or not each additional non-individual seller should be included in this waiver request. If any of the additional sellers are individuals, then the withholding agent must withhold on the individual sellers unless they meet one of the exemptions on Form 593-C.

If There Are Multiple Buyers

If the buyers are husband and wife, enter both names on the form and include both social security numbers. Otherwise, enter the information for the primary buyer on this form and attach a separate sheet listing the following for each additional buyer:

- ✓ Name.
- ✓ Address.
- ✓ Tax ID number.

When to File Your Waiver Request

Complete Form 593-W, Part II, and send it to us as soon as escrow opens.

Generally, we do not accept a request for waiver or reduction after the close of escrow. We will accept the request after the close of escrow only if the parties to the transaction have instructed the withholding agent to hold the full withholding amount to allow time for waiver processing.

If you do not promptly file Form 593-W with us, and title passes to the buyer before we can process the application, there is a withholding requirement of 3 1/3 percent of the total sales price. After title has passed to the buyer and we receive the withholding amount, there is no provision to authorize an early refund. You can claim the amount withheld as a credit against your income or franchise tax liability when you file your California tax return after the end of the year.

Where to File Your Waiver Request

Fax Form 593-W, Part II, and supporting documentation to (916) 845-9512, or mail to:

WITHHOLDING SERVICES AND COMPLIANCE SECTION
FRANCHISE TAX BOARD
PO BOX 651
SACRAMENTO CA 95812-0651

If you send your request by fax, do not send the original request by mail.

After You Submit a Waiver Request to Us

We usually process applications within 45 days after receipt of all necessary information. Please wait 10 working days after faxing your request and 13 working days after mailing your request before contacting us. If you have not received a response from us by the time title transfers, you should instruct the withholding agent to hold the full withholding amount in trust up to 45 days from the date title transfers.

If we issue a withholding waiver or reduction, it applies for the limited purpose of determining the withholding obligation under Revenue and Taxation Code Section 18662. The withholding waiver or reduction does not apply to other issues that may arise in connection with the transfer. We may accept evidence submitted with a waiver request for the purpose of issuing the withholding waiver or reduction; however, this evidence may not be adequate for other issues related to the transfer.

If you receive a waiver or a reduction of withholding, you may still have a California filing requirement and a requirement to pay any tax due on the sale of the California real estate. Call (800) 852-5711 if you do not know whether you must file a California tax return.

Sellers that are S-corporations, estates, or trusts may need to flow the withholding through to shareholders or beneficiaries. For further instructions, see the following California forms:

- ☐ Form 592, Nonresident Withholding Annual Return.
- ☐ Form 592-A, Nonresident Withholding Remittance Statement.
- ☐ Form 592-B, Nonresident Withholding Tax Statement.